

REC'D AUG 09 REC'D

Name: Daniel J. Gallegos

JUDICIAL SELECTION COMMISSION

Application for Judicial Vacancy on the New Mexico Court of Appeals

APPLICATION

PERSONAL

1. Full Name	DANIEL JOSE GALLEGOS, JR.			
2. County of Residence	BERNALILLO			
3. Birthplace	ALBUQUERQUE, NM			
4. If born outside the US, give the basis for your citizenship	N/A			
5. Birth Date	MARCH 19, [REDACTED]			
6. Marital Status	SINGLE			
7. If married, list spouse's full name	N/A			
8. Spouse's occupation	N/A			
9. Do you have any other familial relationships that might present conflicts if you were to be seated as a judge? If so, please explain these relationships and how you would address any conflicts.				
Answer 9: NO				
10. List all places of residence, city and state, and approximate dates for the last 10 years				
Date(s) of Residence	Street Address	City	State	Zip
MAR 2017 – PRESENT	6805 ST. JOSEPH'S AVE NW	ALBUQUERQUE	NM	87120
NOV 2010 – MAR 2017	3626 BUCKSKIN LOOP NE	RIO RANCHO	NM	87144
APR 2010 – NOV 2010	6805 ST. JOSEPH'S AVE NW	ALBUQUERQUE	NM	87120
MAY 2008 – MAR 2010	800 THE MARK LANE	SAN DIEGO	CA	92101
JAN 2006 – MAY 2008	2054 RIVERSIDE AVE APT 1408	JACKSONVILLE	FL	32204

EDUCATION

11. List schools attended with dates and degrees (including all post-graduate work)	
High School(s)	ST. PIUS X HIGH SCHOOL , ALBUQUERQUE, NM AUG 1992 – MAY 1996: DIPLOMA
College(s)	UNIVERSITY OF NOTRE DAME , NOTRE DAME, IN AUG 1996 – MAY 2000: BACHELOR OF BUSINESS ADMINISTRATION (DOUBLE MAJOR – MARKETING AND THEOLOGY)
	UNIVERSITY OF NEW MEXICO , ALBUQUERQUE, NM AUG 2000 – DEC 2001: MASTER OF SCIENCE (PHYSICAL EDUCATION/SPORTS ADMINISTRATION)
Law School(s)	NOTRE DAME LAW SCHOOL , NOTRE DAME, IN AUG 2002 – MAY 2005: JURIS DOCTOR, <i>cum laude</i>

12. Bar Admissions and Dates	NEW MEXICO (NO. 23131), SEP 2005
-------------------------------------	----------------------------------

EMPLOYMENT

13. List Your Present Employment	
Date(s) of Employment	JUN 2013 – PRESENT
Employer	NEW MEXICO COURT OF APPEALS
Mailing Address	COURT OF APPEALS P.O. BOX 25306 ALBUQUERQUE, NM 87125-5306
Business Phone	(505) 841-4618
Position	ASSOCIATE STAFF ATTORNEY (PREHEARING DIVISION)
Duties	<p>Screen appeals for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars.</p> <p>During the calendaring process, provide the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions.</p> <p>Provide recommendations and proposed orders for motions, interlocutory appeals, petitions for writs of certiorari, and petitions for writs of error.</p> <p>Prepare draft memorandum and formal opinions for appeals assigned to a nonsummary calendar.</p> <p>Requires in-depth legal research, analysis, and polished legal writing.</p> <p>Mentor and provide guidance to law clerks.</p>
Supervisor	PAUL FYFE
Date(s) of Employment	APR 2015 – PRESENT
Employer	UNITED STATES NAVY RESERVE SEAL TEAM SEVENTEEN (ST-17)
Mailing Address	3423 GUADALCANAL RD, BLDG 401, 2 ND DECK SAN DIEGO, CA 92155
Business Phone	(619) 537-1304
Position	STAFF JUDGE ADVOCATE / LIEUTENANT COMMANDER
Duties	<p>Provide legal advice and guidance to SEAL Team SEVENTEEN Commanding Officer and leadership with respect to the command's 444 selected reservists and 28 active duty full-time staff personnel.</p> <p>Primary legal advice pertains to military justice matters, administrative separation proceedings, administrative investigations, and ethics/standards of conduct/conflict of interest.</p> <p>On short notice, went forward to Okinawa to serve as Naval Special</p>

	<p>Warfare's on-ground representative for the resolution of an incident involving a Sailor's assault of two local nationals; provided legal advice and expertise resulting in the successful completion of an in-country Summary Court-Martial.</p> <p>Provide training on the Law of War/Law of Armed Conflict to reserve SEALs and Naval Special Warfare personnel.</p> <p>Supervise one Navy paralegal.</p> <p>Currently hold a TOP SECRET/SCI security clearance.</p>
Supervisor	COMMANDER DONALD FREEMAN, USN

14. List Your Previous Employment (beginning with most recent)

Dates of Employment	MAY 2014 – APR 2015 (Full-Time Navy Reserve Mobilization)
Employer	UNITED STATES NAVY RESERVE JOINT TASK FORCE – GUANTANAMO, GUANTANAMO BAY, CUBA
Mailing Address	HEADQUARTERS, JOINT TASK FORCE – GUANTANAMO APO AE 09522-9998
Business Phone	011-5399-78110
Business FAX	N/A
Employer's Email Address	JOSEPH.BOVERI@YAHOO.COM
Position	ADMINISTRATIVE LAW DEPARTMENT HEAD / LIEUTENANT COMMANDER
Duties	<p>Joint Task Force – Guantanamo is responsible for conducting safe, humane, legal, and transparent care and custody of detainees for the purpose of collecting and exploiting intelligence to support law enforcement and war crime investigations pursuant to Operation Enduring Freedom and the Global War on Terrorism.</p> <p>Served as Administrative Law Department Head, supervising/mentoring a team of 3 JAG officers, 7 enlisted personnel, and 1 civilian.</p> <p>Three primary areas of focus: (1) Served as the Joint Task Force – Guantanamo (JTF-GTMO) liaison to the International Committee of the Red Cross (ICRC); (2) Supervised the JTF's Freedom of Information Act (FOIA) program; and (3) Advised the JTF Commander on administrative law issues, including ethics/standards of conduct, financial liability investigations, and financial disclosure requirements.</p> <p>As the JTF's liaison to the ICRC, engaged and interacted with ICRC representatives in Washington, DC, as well as with counterparts in the JTF and in the Department of Defense, resulting in the successful execution of 3 high-profile quarterly visits and the accomplishment of several high-visibility ICRC initiatives, including some with senior DoD</p>

	<p>and White House-level interest. Earned unfettered access to JTF senior leaders and a place at the table during senior level discussion with United States Southern Command and Office of Secretary of Defense (Detainee Affairs). Provided on-site legal advice to the JTF Commander for 5 sensitive detainee movement operations.</p> <p>At the end of the mobilization, was rated by JTF Chief of Staff as Number 1 out of 39 Lieutenant Commanders/Majors in the JTF.</p> <p>Personal Award: Defense Meritorious Service Medal Campaign/Unit/Service Awards: Global War on Terrorism Expeditionary Medal; Armed Forces Reserve Medal (with Mobilization "M" device); Joint Meritorious Unit Award; Navy Overseas Service Ribbon</p>
Supervisor	COMMANDER JOSEPH BOVERI, JAGC, USN
Dates of Employment	APR 2012 – MAY 2014
Employer	UNITED STATES NAVY RESERVE U.S. PACIFIC FLEET RESERVE LEGAL UNIT
Mailing Address	NAVAL OPERATIONAL SUPPORT CENTER KITSAP 651 GATEWOOD AVE BREMERTON, WA 98337
Business Phone	(360) 627-2204
Business FAX	N/A
Employer's Email Address	LESLIE.REARDANZ@NAVY.MIL
Position	OPERATIONAL LAW ATTORNEY / LIEUTENANT COMMANDER (PROMOTED FROM LIEUTENANT IN JUL 2013)
Duties	<p>Served as operational law attorney for U.S. THIRD Fleet Maritime Air Operations Unit.</p> <p>During the 22-nation Rim of the Pacific (RIMPAC) 2012 exercise, served as Deputy Staff Judge Advocate for the Combined Force Air Component Commander while providing legal guidance to the Air Operations Center Strategy Division and Targeting Effects Team. Ensured that air plans and targeting lists were in compliance with the Law of Armed Conflict and applicable rules of engagement. Provided training to coalition watchstander JAGs on the Joint Targeting Cycle.</p> <p>During Talisman Saber 2013 exercise, led two Australian JAGs in vetting targeting lists for the Targeting Effects Team, and mentored them on how to effectively advise operators.</p> <p>Completed Joint Professional Military Education (Phase I) through the Naval War College, College of Distance Education. Master's level coursework in National Security Decision Making, Strategy and War, and Joint Maritime Operations.</p>

	Also, completed the Joint Air Operations Planning Course and the Joint Air Operations Command and Control Course.
Supervisor	CAPTAIN LES REARDANZ, JAGC, USN
Dates of Employment	AUG 2011 – DEC 2012
Employer	SECOND JUDICIAL DISTRICT ATTORNEY'S OFFICE BERNALILLO COUNTY, NM
Mailing Address	520 LOMAS BLVD NW ALBUQUERQUE, NM 87102
Business Phone	(505) 222-1099
Business FAX	N/A
Employer's Email Address	LTRABAUDO@DA2ND.STATE.NM.US
Position	ASSISTANT DISTRICT ATTORNEY
Duties	<p>Assigned first to the Felony Domestic Violence Division, then assigned to the Crimes Against Children Division.</p> <p>Handled a felony caseload involving cases of murder, rape, kidnapping, aggravated battery on a household member, child abuse, incest, and child sex abuse, as well as drug trafficking.</p> <p>Presented cases to the Bernalillo County Grand Jury; conducted numerous (5 plus) felony jury trials and dozens of guilty plea hearings, as well as hundreds of motions hearings.</p> <p>Member of the Violent Crimes and Crimes Against Children on-call response teams; responded out to the scene on multiple occasions upon the discovery of an unusual death; provided guidance to investigators and assistance with the writing of search/arrest warrants.</p>
Supervisor	LISA TRABAUDO
Dates of Employment	APR 2010 – JUN 2011
Employer	THIRTEENTH JUDICIAL DISTRICT ATTORNEY'S OFFICE SANDOVAL COUNTY, NM
Mailing Address	711 CAMINO DEL PUEBLO BERNALILLO, NM 87004
Business Phone	(505) 771-7400
Business FAX	(505) 867-3152
Employer's Email Address	13SPECIALPROGRAMS@DA.STATE.NM.US
Position	ASSISTANT DISTRICT ATTORNEY
Duties	<p>Handled a docket of primarily misdemeanor DWI and domestic violence cases in Sandoval County Magistrate Court, from the filing of the complaint until resolution of the case.</p> <p>Conducted felony preliminary hearings; presented felony cases to the Sandoval County Grand Jury; made appearances in district court on arraignments and probation revocation proceedings.</p>

	Conducted numerous (20 plus) jury and bench misdemeanor trials.
Supervisor	HENRY VALDEZ
Dates of Employment	APR 2010 – APR 2012
Employer	UNITED STATES NAVY RESERVE NAVAL RESERVE LEGAL SERVICE OFFICE SOUTHWEST
Mailing Address	3595 STURTEVANT ST, SUITE 2 SAN DIEGO, CA 92136
Business Phone	(619) 556-7539
Business FAX	(619) 556-8955
Employer's Email Address	DANIEL.G.JONES2@NAVY.MIL
Position	DEFENSE COUNSEL & LEGAL ASSISTANCE ATTORNEY / LIEUTENANT
Duties	<p>As a Legal Assistance Attorney, drafted approximately 20 wills and 50 powers of attorney for reserve servicemembers.</p> <p>As a Defense Attorney, represented Sailors being processed for administrative separation before administrative separation boards.</p> <p>Served as Deputy Staff Judge Advocate on board USS BLUE RIDGE, U.S. SEVENTH Fleet flagship, for the combined U.S. – Republic of Korea exercise Key Resolve 2011.</p> <p>Served as the lead JAG watchstander during the combined U.S. – Australian exercise Talisman Saber 2011.</p> <p>Rated by the Commanding Officer as Number 1 of 4 JAG Lieutenants.</p> <p>Completed courses in Joint Targeting and Collateral Damage Estimation.</p>
Supervisor	CAPTAIN DANIEL JONES, JAGC, USN
Dates of Employment	JUN 2008 – MAR 2010
Employer	UNITED STATES NAVY (ACTIVE DUTY) USS NIMITZ (CVN 68)
Mailing Address	UNIT 100103, BOX 1 FPO AP 96620
Business Phone	(360) 627-2656
Business FAX	N/A
Employer's Email Address	DEANDREA.FULLER@NAVY.MIL
Position	DEPUTY COMMAND JUDGE ADVOCATE / LIEUTENANT
Duties	<p>Primary duty was to serve as the ship's Discipline Officer. Over the course of nearly two years, resolved approximately 700 disciplinary issues/non-judicial punishment cases.</p> <p>Provided legal advice on numerous administrative investigations, including five admiralty letter reports and three death investigations, and</p>

	<p>hundreds of administrative separations.</p> <p>As Tax Officer, coordinated and oversaw VITA program and 11 volunteers in the preparation of more than 400 tax returns.</p> <p>Qualified as Officer of the Deck (in-port) and as Antiterrorism Tactical Watch Officer (ATTWO).</p> <p>As Repair Locker Officer, led and supervised a team of 80 Sailors through General Quarters drills, ensuring maximum training and readiness.</p> <p>During 9-month Western Pacific/Arabian Gulf deployment in support of Operation Enduring Freedom:</p> <p>Oversaw the implementation of the Liberty Risk Program, ensuring compliance with FIFTH and SEVENTH Fleet policies; served as a single-officer foreign claims commission, negotiating, settling, and paying foreign claims; served as a member of the advance team; stood watch as ATTWO (with weapons release authority) during transits through the Strait of Hormuz; served as Summary Court-Martial Officer for nine cases.</p> <p>Supervised, led, and mentored 7 enlisted personnel in the legal office.</p> <p>Personal Award: Navy Commendation Medal Campaign/Unit/Service Awards: Global War on Terrorism Expeditionary Medal; Meritorious Unit Award; Navy Sea Service Deployment Ribbon</p>
Supervisor	COMMANDER DEANDREA FULLER, JAGC, USN
Dates of Employment	JUN 2007 – DEC 2007
Employer	UNITED STATES NAVY (ACTIVE DUTY) MULTI-NATIONAL FORCE – IRAQ TASK FORCE 134 CAMP VICTORY, BAGHDAD, IZ
Mailing Address	N/A
Business Phone	N/A
Business FAX	N/A
Employer's Email Address	N/A
Position	STAFF ATTORNEY / LIEUTENANT
Duties	<p>During Operation Iraqi Freedom, Task Force 134, Multi-National Force – Iraq, was responsible for detainee operations and for the provision of legal due process for captured insurgents in a hostile fire environment.</p> <p>Served as Task Force 134's Central Criminal Court of Iraq (CCCI) Review Attorney, reviewing more than 500 post-trial cases, including</p>

	<p>more than 50 death penalty cases, and advised the Deputy Commanding General regarding the most appropriate disposition of each detainee's case.</p> <p>Served as Task Force 134's Joint Detainee Review Committee (JDRC) Review Attorney, obtaining, reviewing, and briefing capturing unit and intelligence objections to the Deputy Commanding General.</p> <p>Personally served on a Multi-National Forces Review Committee panel at Camp Bucca, Iraq, interviewing (in-person), reviewing, and making release recommendations on more than 150 detainees suspected of various insurgent activities.</p> <p>As Night Shift Officer-in-Charge, supervised 2 JAG officers and 3 enlisted personnel.</p> <p>Personal Award: Joint Service Commendation Medal Campaign/Unit/Service Awards: Iraq Campaign Medal; Joint Meritorious Unit Award; Navy Sea Service Deployment Ribbon</p>
Supervisor	CAPTAIN BRIAN BILL, JAGC, USN
Dates of Employment	DEC 2005 – JUN 2008
Employer	UNITED STATES NAVY (ACTIVE DUTY) REGION LEGAL SERVICE OFFICE SOUTHEAST
Mailing Address	NAVAL AIR STATION P.O. BOX 116 JACKSONVILLE, FL 32212-0116
Business Phone	(904) 542-2565
Business FAX	(904) 542-3274
Employer's Email Address	BETH.PAYTONOBR@NAVY.MIL
Position	TRIAL COUNSEL (MILITARY PROSECUTOR) / LIEUTENANT (PROMOTED FROM LIEUTENANT JUNIOR GRADE IN JUN 2006)
Duties	<p>Handled a caseload of special court-martial (misdemeanor-level) and general court-martial (felony-level) cases involving charges including conspiracy to commit murder, sexual assault/rape, larceny of government property, child pornography, drug use, and counterfeiting.</p> <p>Worked in close conjunction with Naval Criminal Investigative Service (NCIS) agents and other federal agencies from the investigation phase through trial or guilty plea.</p> <p>Made charging decisions, presented cases during Article 32 investigations (equivalent to a civilian preliminary hearing), argued motions, and negotiated plea agreements. Most cases resulted in guilty pleas, in which case I also made argument and presented evidence on sentencing.</p>

	<p>Conducted multiple contested trials before members (equivalent to a jury trial).</p> <p>Provided training on multiple occasions to NCIS agents at the Federal Law Enforcement Training Center in Glynco, Georgia.</p> <p>Personal Award: Navy Commendation Medal Campaign/Unit/Service Awards: National Defense Service Medal; Global War on Terrorism Service Medal; Navy Pistol Ribbon</p>
Supervisor	COMMANDER BETHANY PAYTON-O'BRIEN, JAGC, USN
Dates of Employment	AUG 2005 – DEC 2005
Employer	UNITED STATES NAVY OFFICER TRAINING COMMAND NEWPORT
Mailing Address	NAVAL JUSTICE SCHOOL 360 ELLIOT ST NEWPORT, RI 02841
Business Phone	(401) 841-3800
Business FAX	N/A
Employer's Email Address	N/A
Position	STUDENT
Duties	<p>NAVAL JUSTICE SCHOOL (BASIC LAW COURSE): OCT 2005 – DEC 2005: STUDENT / LIEUTENANT JUNIOR GRADE (PROMOTED FROM ENSIGN IN OCT 2005)</p> <p>Graduated with honors (Class standing 6 of 41).</p> <p>OFFICER INDOCTRINATION SCHOOL: AUG 2005 – SEP 2005: STUDENT / ENSIGN</p> <p>Graduated with honors.</p>
Supervisor	CAPTAIN WILLIAM GREENE, JAGC, USN

Note: No. 14 is a separate table which enables you to copy and paste it as many times as necessary to list all previous employers.

PARTNERS AND ASSOCIATES

15. List all partners and associates, beginning with the current or most recent:

Answer 15: NONE

EXPERIENCE

16. How extensive is your experience in Personal Injury Law?

Answer 16: As a Prehearing Staff Attorney with the NM Court of Appeals, screened numerous civil cases involving personal injury for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars. This included providing the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions (if necessary).

17. How extensive is your experience in Commercial Law?

Answer 17: As a Prehearing Staff Attorney with the NM Court of Appeals, screened approximately 70 civil appeals (including civil cases not captured elsewhere, such as worker's compensation) for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars. This included providing the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions (if necessary).

18. How extensive is your experience in Domestic Relations Law?

Answer 18: As a Prehearing Staff Attorney with the NM Court of Appeals, screened approximately 13 domestic relations appeals for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars. This included providing the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions (if necessary).

19. How extensive is your experience in Juvenile Law?

Answer 19: As a Prehearing Staff Attorney with the NM Court of Appeals, screened approximately 16 juvenile appeals (to include termination of parental rights cases, along with juvenile criminal cases) for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars. This included providing the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions (if necessary).

20. How extensive is your experience in Criminal Law?

Answer 20: Approximately four-and-a-half years of experience practicing criminal law, including two years as a military prosecutor—handling cases under the Uniform Code of Military Justice and Military Rules of Evidence—and two-and-a-half years of prosecuting misdemeanor and felony cases as an Assistant District Attorney in the Thirteenth (Sandoval County) and the Second (Bernalillo County) Judicial Districts. Also, have reviewed, analyzed, and made recommendations (including proposed calendar notices and proposed opinions) in a number of criminal appeals from throughout the State of New Mexico over the last four years.

MILITARY PROSECUTOR: Managed a caseload of special court-martial (misdemeanor-level) and general court-martial (felony-level) cases involving charges including conspiracy to commit murder, sexual assault/rape, larceny of government property, child pornography, drug use, and counterfeiting.

Worked in close conjunction with Naval Criminal Investigative Service (NCIS) agents and other federal agencies from the investigation phase through trial or guilty plea.

Made charging decisions, presented cases during Article 32 investigations (equivalent to a civilian preliminary hearing), argued motions, and negotiated plea agreements. Most cases resulted in guilty pleas, in which case I also made argument and presented evidence on sentencing.

Conducted multiple contested trials before members (equivalent to a jury trial).

ASSISTANT DISTRICT ATTORNEY (STATE OF NM): At the Second Judicial District Attorney's Office, was assigned to the felony domestic violence division and the crimes against children division. Handled a felony caseload involving cases of murder, rape, kidnapping, aggravated battery on a household member, child abuse, incest, and child sex abuse, as well as drug trafficking.

Presented cases to the Bernalillo County Grand Jury; conducted numerous (5 plus) felony jury trials and dozens of guilty plea hearings, as well as hundreds of motions hearings.

Member of the Violent Crimes and Crimes Against Children on-call response teams; responded out to the scene on multiple occasions upon the discovery of an unusual death; provided guidance to investigators and assistance with the writing of search/arrest warrants.

At the Thirteenth Judicial District Attorney's Office, handled a docket of primarily misdemeanor DWI and domestic violence cases in Sandoval County Magistrate Court, from the filing of the complaint until resolution of the case.

Conducted felony preliminary hearings; presented felony cases to the Sandoval County Grand Jury; made appearances in district court on arraignments and probation revocation proceedings.

Conducted numerous (20 plus) jury and bench misdemeanor trials, as well as dozens of guilty plea hearings.

APPEALS (NM COA PREHEARING): As a Prehearing Staff Attorney with the NM Court of Appeals, screened approximately 104 criminal appeals for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars. This included providing the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions (if necessary). Drafted 5 proposed formal opinions in criminal cases.

21. How extensive is your experience in Appellate Law?

Answer 21: As a Prehearing Staff Attorney with the NM Court of Appeals, screened approximately 200 appeals from throughout the State of New Mexico for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars. This includes approximately 104 criminal appeals, 73 civil appeals, 12 termination of parental rights appeals, and 10 worker's compensation appeals. For each, I provided the Court with calendar assignment recommendations, proposed notices of disposition (calendar notices), and proposed opinions (if necessary).

I also provided the Court with 18 recommendations and proposed orders for interlocutory appeals, petitions for writs of certiorari, and petitions for writs of error.

Drafted at least 71 proposed memorandum opinions and 5 proposed formal opinions.

22. How many cases have you tried to a jury? Of those trials, how many occurred within the last two years? Please indicate whether these jury trials involved criminal or civil cases.

Answer 22: Approximately 7 felony trials (larceny of government property / drug use / murder / domestic violence / child abuse / incest) and 10 misdemeanor trials (DWI / domestic violence). All criminal; none within the past two years.

23. How many cases have you tried without a jury? How many of these trials occurred within the last two years? Please indicate whether these non-jury trials involved criminal or civil cases.

Answer 23: Approximately 10 misdemeanor trials (DWI / domestic violence). All criminal; none within the past two years.

24. How many appeals have you handled? Please indicate how many of these appeals occurred within the last two years.

Answer 24: As noted in Answer 21, as a Prehearing Staff Attorney with the NM Court of Appeals, screened approximately 200 appeals for jurisdictional defects and for assignment to the Court's summary and nonsummary calendars, as well as made an additional 18 recommendations on interlocutory appeals, petitions for writs of certiorari, and petitions for writs of error. Of these, approximately 152 appeals have

been worked over the past two years.

PUBLIC OFFICES/PROFESSIONAL & CIVIC ORGANIZATIONS

25. Public Offices Held and Dates

Public Office	Dates
NONE	N/A

26. Activities in professional organizations, including offices, held, for last 10 years

Professional Organization	Position Held	Dates
HISPANIC NATIONAL BAR ASSOCIATION	MEMBER	2005 - PRESENT

27. Activities in civic organizations, including offices, held, for last 10 years

Civic Organization	Position Held	Dates
NATIONAL HISPANIC CULTURAL CENTER	BOARD OF DIRECTORS (Appointed by Gov. Susana Martinez)	DEC 2015 - PRESENT
NATIONAL HISPANIC CULTURAL CENTER FOUNDATION	MEMBER	2016 - PRESENT
AMERICAN LEGION POST 101, Anton Chico, NM	MEMBER	2012 - PRESENT
NOTRE DAME CLUB OF NEW MEXICO	MEMBER	2000 - PRESENT
ST. JUDE THADDEUS CATHOLIC CHURCH	MEMBER	2010 - PRESENT
REPUBLICAN PARTY OF BERNALILLO COUNTY	MEMBER	2017 - PRESENT
REPUBLICAN PARTY OF SANDOVAL COUNTY	MEMBER	2010 - 2017

28. Avocational interests and hobbies

Answer 28: RUNNING, TRIATHLONS, READING (HISTORY, BIOGRAPHIES, MILITARY), TRAVELING, WATCHING/TRAVELING TO NOTRE DAME ATHLETIC EVENTS, CROSSWORD PUZZLES, VOLUNTEERING

29. Have you been addicted to the use of any substance that would affect your ability to perform the essential duties of a judge? If so, please state the substance and what treatment received, if any.

Answer 29: [REDACTED]

30. Do you have any mental or physical impairment that would affect your ability to perform the essential duties of a judge? If so, please specify

Answer 30: [REDACTED]

31. To your knowledge, have you ever been disciplined for violation of any rules of professional conduct in any jurisdiction? In particular, have you ever received any discipline, formal or informal, including an "Informal Admonition." If so, when, and please explain.

Answer 31: [REDACTED]

32. Have you ever been convicted of any misdemeanor or felony other than a minor traffic offense?
Answer 32: [REDACTED]
33. Have you ever had a DWI or any criminal charge, other than a minor traffic offense, filed against you? If so, when? What was the outcome?
Answer 33: [REDACTED]
34. Have you ever been a named party in any lawsuit in either your personal or professional capacity? If so, please explain the nature of the lawsuit(s) and the result(s).
Answer 34: NO
35. To your knowledge, is there any circumstance in your professional or personal life that creates a substantial question as to your qualifications to serve in the judicial position involved or which might interfere with your ability to so serve?
Answer 35: NO
36. If you have served as a judge in New Mexico, have you ever been the subject of charges of a violation of the Code of Judicial Conduct for which a public filing has occurred in the New Mexico Supreme Court, and if so, how was it resolved?
Answer 36: N/A
37. If you have served as a judge in New Mexico, have you ever participated in a Judicial Performance Evaluation, including interim, and if so, what were the results?
Answer 37: N/A
38. Have you filed all federal, state and city tax returns that are now due or overdue, and are all tax payments up to date? If no, please explain.
Answer 38: YES
39. Have you or any entity in which you have or had an interest ever filed a petition in bankruptcy, or has a petition in bankruptcy been filed against you? If so, please explain.
Answer 39: NO
40. Are you presently an officer, director, partner, majority shareholder or holder of a substantial interest in any corporation, partnership or other business entity? If so, please list the entity and your relationship:
Answer 40: NO
41. Do you foresee any conflicts under the NM Code of Judicial Conduct that might arise regularly? If so, please explain how you would address these conflicts.
Answer 41: NO
42. Do you meet the constitutional qualifications for age, residency, and years of practice for the judicial office for which you are applying? Please explain.
Answer 42: YES: AT LEAST 35 YEARS OLD (39); ACTUAL PRACTICE OF LAW FOR AT LEAST TEN YEARS (12); RESIDED IN NM FOR AT LEAST THREE YEARS PRIOR (PHYSICALLY RESIDED IN NM SINCE 2010; WAS MOBILIZED AS A NAVAL RESERVIST TO GUANTANAMO BAY, CUBA FROM MAY 2014 TO APRIL 2015, BUT MAINTAINED NM VOTING RESIDENCY / DOMICILE PURSUANT TO SERVICEMEMBERS CIVIL RELIEF ACT, 50 U.S.C. § 595)
[REDACTED]

43. Please explain your reasons for applying for a judicial position and what factors you believe indicate that you are well suited for it.

Answer 43:

This is the second time that I am seeking appointment to the appellate bench. In December 2016, the Judicial Nominating Commission found that I was qualified for a seat on the NM Court of Appeals and sent my name to Governor Martinez. Although I was not ultimately appointed by the Governor, I am still honored and proud that this Commission had enough faith in me to recommend me for this position.

I am again seeking appointment to the NM Court of Appeals because, as a native New Mexican, I firmly believe that the people of New Mexico deserve a legal system that works for them and that they can trust. Specifically, with respect to the judicial position for which I am applying, the people of our state must be able to trust that the appellate judges reviewing their cases have the legal acumen to understand the issues before them in order to render well-reasoned, principled, legally supported decisions; that the judges possess the judgment and temperament necessary to render fair and just decisions; and that the judges have the ability to clearly and plainly communicate the reasoning behind their decisions to the parties and to the public in general.

I have a demonstrated track record of earning and maintaining the trust of crime victims and law enforcement officers, as well as the trust of the judges of the NM Court of Appeals and military commanders—including at sea and at war. It would be an honor and a privilege to serve my fellow New Mexicans in an official—and accountable—position, to put my education and unique experience/perspective in their service, and to earn their trust by ensuring that every case receives a fair and just review on appeal.

Legal Acumen. An appellate judge in New Mexico, by virtue of the vast assortment of cases that may come before the Court of Appeals, must by necessity be a generalist. Over the course of my career, I have demonstrated the ability to quickly master a variety of legal disciplines, often under less than optimal conditions.

After graduating from Notre Dame Law School, I received a commission as an officer in the United States Navy Judge Advocate General's (JAG) Corps. During my first two years in the Navy, I served as a military prosecutor, handling cases under the Uniform Code of Military Justice (UCMJ) and the Military Rules of Evidence. However, in addition to my prosecutorial duties, I was selected on only days' notice to serve as the Staff Judge Advocate on board USS MONTEREY (CG 61) for the NATO exercise Neptune Warrior. In that role, I was required to quickly learn, understand, and master NATO rules of engagement and exercise scenarios.

In a similar fashion, I deployed as an individual augmentee to Baghdad in 2007 in support of Operation Iraqi Freedom, at the height of the "Surge," and immediately had to come up to speed with our operations, particularly with respect to the various legal authorities and procedures underlying our detention operations. As the Multinational Force-Iraq's Central Criminal Court of Iraq (CCCI) post-trial review officer, I reviewed and made disposition recommendations on more than 500 criminal convictions, including more than 50 death penalty cases, taking into account available intelligence and other evidentiary and policy considerations.

My second active duty assignment in the Navy JAG Corps was as Deputy Command Judge Advocate on board the nuclear-powered aircraft carrier USS NIMITZ (CVN 68). My primary responsibility was to serve as the ship's Discipline Officer, handling hundreds of non-judicial punishment cases under Article 15 of the UCMJ and numerous administrative separations. I also provided oversight, direction, and guidance for administrative investigations, including several death investigations. When NIMITZ

deployed to the Arabian Gulf in support of Operation Enduring Freedom, I served as a single-officer foreign claims commission, processing, adjudicating, and paying claims in foreign ports for damage caused by our Sailors. I was also a member of the advance team, along with the shore patrol leadership and the ship's Naval Criminal Investigative Service (NCIS) agent, flying off the carrier and arriving in ports days before the strike group in order to engage local officials and to ensure that proper safety precautions were in place prior to the ship's port visits.

After leaving active duty, I returned home to New Mexico with the intention of serving my community as I had served my country. I joined the Thirteenth Judicial District Attorney's Office in Sandoval County, carrying a heavy DWI and domestic violence docket. Later, looking for greater felony exposure, I joined the Second Judicial District Attorney's Office, where I was assigned to the felony domestic violence division and the crimes against children division. As an assistant district attorney (ADA), I was required to manage a caseload from arraignment through final disposition—whether by plea or by trial—engaging in an extensive motions practice, conducting pretrial interviews, managing discovery obligations, and interacting/engaging with crime victims.

At the same time as I was serving the people of Sandoval and Bernalillo counties as an ADA, I continued to serve my country in the Navy Reserve JAG Corps. I have had the opportunity to participate in four coalition and multi-national operational exercises, including the 22-nation Rim of the Pacific (RIMPAC) exercise, advising commanders on rules of engagement and on the Law of Armed Conflict.

Perhaps my most intense Navy experience occurred when I was mobilized for one-year to serve at Joint Task Force – Guantanamo. There, I served as the JTF's liaison to the International Committee of the Red Cross and I also managed the JTF's Freedom of Information Act (FOIA) Program. These responsibilities again required me to learn vast new areas of the law and to perform under the watchful eye and immense scrutiny of the highest levels of government, as well as of the public.

All in all, I have needed every bit of the legal acumen I developed—and displayed—during my career in order to successfully perform in my current position as a Staff Attorney with the NM Court of Appeals. I have handled approximately 220 appeals, approximately 110 of which were criminal appeals. This means that for approximately 110 appeals, I have had to learn and apply legal standards unfamiliar to me from my time in practice. This is the same skill required of judges on our Court, and I believe that my experience in doing so successfully is a positive indicator that I have the necessary intellectual rigor and that I can step in on day one and contribute to the work of the Court.

Judgment and Temperament. Often, it is difficult to assess whether someone has the appropriate judgment and temperament before actually placing him or her in a situation in which both are needed. This is especially true with respect to lawyers who have not actually served as judges. Fortunately, although I have not been a judge, I have been placed in situations throughout my career that have tested, and fostered, my judgment and temperament.

On board NIMITZ, I served as a Summary Court-Martial Officer in 9 misdemeanor-level cases. A unique procedure in the military, the Summary Court-Martial involves one presiding officer, but no prosecutor or defense attorney. In essence, the Summary Court-Martial Officer serves as the judge, prosecutor, and defense attorney, ensuring that the evidence supports the charges beyond a reasonable doubt and examining all witnesses from the perspective of both the government and the defense, and ultimately determining guilt and sentence (with the authority to sentence up to 30 days in the Navy brig).

Also on board NIMITZ, I was hand selected by the Commanding Officer—specifically for my judgment and temperament—to stand watch on the bridge of the ship as the Antiterrorism Tactical Watch Officer (with weapons release authority) during the always-perilous transits through the Strait of Hormuz. Additionally, due to my calm deportment, I was assigned to lead an 80-Sailor team through damage

control drills (fire, flooding, structural damage, chemical/biological/nuclear attack response).

I twice had the opportunity to serve as an Article 32 Officer, which is the military equivalent of serving as a judge for a preliminary hearing. Under the UCMJ, the Article 32 hearing is more involved, however, than a typical preliminary hearing and the Article 32 Officer is required to write a report outlining all of the evidence presented, analyzing whether the evidence supports the charges by a preponderance of the evidence, and recommending the proper forum for adjudication of the charges.

In Iraq, I served on a Multi-National Force Review Committee, a panel of three officers responsible for interviewing captured detainees, reviewing evidence and applicable intelligence, and ultimately recommending whether the detainee should be retained in coalition custody or released. In this capacity, I reviewed and made recommendations on more than 150 detainees accused of insurgent activities against coalition forces.

In terms of temperament, my experience in the Navy ingrained in me the importance of collaboration and of fostering the ability to work with and relate to a wide variety of people. I would not have been able to accomplish the things I did in complex and large organizations such as the NIMITZ—a floating city—or JTF-Guantanamo without being able to cooperate and get along with others. I believe that the sense of teamwork and collegiality I developed and demonstrated during my military service will be an asset to a Court that is truly at its best when its judges can work together in a professional and cooperative manner.

Thus, although I have not previously served as a judge, I believe that my judgment and temperament have been both relied upon by my supervisors—including the Commanding Officer of a nuclear-powered aircraft carrier and the Deputy Commanding General in Iraq—and tested in a number of different ways so as to demonstrate that I have the judgment and temperament required of an appellate judge.

Communication. A judicial decision, like legal advice, is only as good as the reasoning and legal support behind it. My experience as a legal advisor to military commanders—non-lawyers—has developed my capacity for plainly and succinctly laying out the issues and the various legal options. My time with the Court of Appeals has honed my ability to similarly communicate—in a written opinion—the appellate issues and the legal reasoning behind a decision. The people of New Mexico can expect no less from me should I have the opportunity to serve them as a judge.

Conclusion. As a native New Mexican, I know the importance of having a judicial system that works for the people of this state, and that the people can trust. I believe that my unique experience as an advisor to military commanders—both at sea and at war—as well as my experience as a prosecutor and as a Staff Attorney with the Court of Appeals, qualifies me as someone the people of New Mexico can trust to render fair, just, and well-reasoned decisions. It would be my honor to serve them in this way.

44. Does submission of this application express your willingness to accept judicial appointment to the New Mexico Court of Appeals if your name is chosen by the Governor?

Answer 44: YES

Items to be Submitted in Separate Document(s)

1. Please have **at least two, but not more than five**, letters of recommendation submitted directly to The Chair of the Judicial Selection Commission. Include letters from one or more professional adversaries. **If more than five letters are submitted, only the first five received will be submitted to the Commission.** Letters of recommendation may be

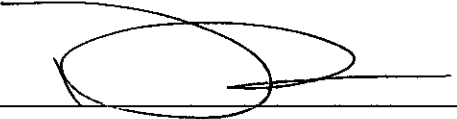
scanned to be part of the application; however, **the original letters must be mailed directly from the source to the Judicial Selection Office.**

2. Please attach a list of no more than eight (8) references.
3. Please enclose **one** legal writing sample, such as a legal memorandum, opinion, or brief. If you had assistance from an associate, clerk or partner, indicate the extent of such assistance. Please submit no more than 20 pages.
4. You may also attach a copy of **one** other publication you have written which you feel would be relevant to the Commission's consideration of your qualifications. For this too, please submit no more than 20 pages. If you include more than one additional publication, only one will be presented for the Commission's review. The others will be retained on file with the rest of your application materials.
5. If you have, currently or in the past, suffered from any mental, physical or other condition that would affect your ability to perform the essential duties of a judge, and which has not been disclosed above, please describe the nature of such condition and your treatment and explain how it would affect your service. You may answer this request, as well as Questions 29 and 30, by submission of a separate confidential letter. If you wish the letter to remain confidential, please mark "CONFIDENTIAL" at the top of the first page of the letter. The information will be made available to each commissioner and otherwise hold the information confidential to the extent allowed by law.

[Instructions: All of the answers stated in this application must be affirmed as true under penalty of perjury, by self-affirmation.]

AFFIRMATION

The undersigned hereby affirms that he/she is the person whose signature appears herein on this application for judicial appointment; that he/she has read the same and is aware of the content thereof; that the information that the undersigned has provided herein is full and correct according to the best knowledge and belief of the undersigned; that he/she has conducted due diligence to investigate fully each fact stated above; that he/she executed the same freely and voluntarily; that he/she affirms the truth of all statements contained in this application under penalty of perjury; and that he/she understands that a false answer may warrant a referral to the Disciplinary Board or other appropriate authorities.

/s/:  Date: 8/7/17

WRITING SAMPLE

Daniel J. Gallegos

This writing sample is a proposed formal opinion I drafted for a panel of the New Mexico Court of Appeals. It was drafted as part of a Prehearing “Project Rotation” (wherein division personnel draft proposed opinions for cases on a nonsummary calendar) and had no input from judges prior to submission. Following submission, the authoring judge and the assigned panel were free to use to the draft in any way they desired, including editing the draft or deciding outright not to use the draft.

Case identifiers, including the Court of Appeals case number and the defendant’s name, have been removed.

PROPOSED FORMAL OPINION

Defendant appeals from the district court's denial of her motion to suppress evidence based on an illegal search and seizure in violation of the Fourth Amendment to the United States Constitution and Article II, Section 10 of the New Mexico Constitution. Following a hearing in which the motion was denied, Defendant entered a conditional no contest plea to Possession of a Controlled Substance (Cocaine), reserving the right to appeal the denial of her motion. [RP 38-42] Defendant contends that she was seized without reasonable suspicion when two police officers approached the parked vehicle she was sitting in as a passenger and ordered the driver to open the door, and that the evidence discovered as a result of her illegal detention must be suppressed. We agree. Accordingly, we reverse.

BACKGROUND

Defendant was indicted on a single count of Possession of a Controlled Substance (Cocaine)(Felony - Narcotic Drug). [RP 1] Defendant subsequently filed a written motion for the suppression of evidence obtained in violation of Article II, Section 10 of the New Mexico Constitution and the Fourth Amendment to the United States Constitution. [RP 28-33] A hearing on the motion was held by the district court and the motion was ultimately denied. Albuquerque Police (APD) Officer Connor Rice was the sole witness at the hearing, and the following facts, as well as those included throughout this opinion, were developed during the course of his testimony.

APD Officers Rice and Nick Wilson were on bicycle patrol on the 500 block of Texas Street NE during the afternoon of March 2, 2010. [11-4-10 Tr. 9-10] This was a routine patrol and there had been no reports or dispatches regarding suspicious or criminal activity in the area. [11-4-10 Tr. 17, 46] The officers were dressed in uniform and displaying their badge of office. [11-4-10 Tr. 10]

As they rode northbound on Texas Street, Officer Rice observed a black Audi station wagon parked in an apartment complex parking lot. [11-4-10 Tr. 11] He did not recognize the car as being from the area. [11-4-10 Tr. 11] The car was parked in a marked parking space facing westbound, toward the apartment building, with the rear of the car facing the street. [11-4-10 Tr. 11-12] Officer Rice's suspicion was aroused when he noticed that there were three individuals sitting in the car and the motor was not running. [11-4-10 Tr. 16] He admitted, though, that he did not see anything to indicate that any of the car's occupants were doing anything illegal or criminal. [11-4-10 Tr. 44-46] As the officers rode closer to the car, Officer Rice observed the passenger in the backseat, later identified as Defendant, move "abruptly over to her right" and then back to her left. [11-4-10 Tr. 13-14] Both officers were still behind the car at the point when Officer Rice saw this movement, and he "couldn't say" whether Defendant saw him or not. [11-4-10 Tr. 54, 60-61]

The officers decided to approach the car to "see what was going on, see what they were up to, make sure that everything was okay." [11-4-10 Tr. 17] They pulled up and parked their bikes "behind the vehicle, like kind of behind probably towards the driver side . . ." [11-4-10 Tr. 17] As the two officers walked toward the front of the car, Officer Rice observed the driver "make an abrupt movement," which he described as "drop[ping] his shoulder down." [11-4-10 Tr. 17, 19] Concerned for officer safety because of this movement, Officer Rice did not ask the occupants any of the questions he originally intended. [11-4-10 Tr. 19] He instead began his interaction with the occupants by telling the driver, "SIR, open the door" (emphasis in transcript) or "Hey man, open the door." [11-4-10 Tr. 20] The driver immediately opened the door. [11-4-10 Tr. 20]

As soon as the driver opened his door, Officer Rice noticed an open alcoholic beverage can in the driver's side door sill. [11-4-10 Tr. 20-21] In the center console between the driver and front

passenger, Officer Rice observed a clear plastic sandwich bag containing a small amount of green leafy substance he believed to be marijuana. [11-4-10 Tr. 21] Officer Rice then asked the driver to step out of the car. [11-4-10 Tr. 22] In order to further investigate, and for officer safety, he asked the front passenger and Defendant to also get out of the car. [11-4-10 Tr. 23] He testified that at that point, all three of the vehicle's occupants were being detained for investigation of the open alcohol container and the marijuana. [11-4-10 Tr. 25, 49, 53-54]

When Defendant exited the car, Officer Rice saw a woman's purse sitting on the backseat next to where she had been sitting. [11-4-10 Tr. 26] There were a number of small denomination bills crumpled up and sitting on top of the purse. [11-4-10 Tr. 27] He also noticed that there was a similarly "fairly tightly" crumpled bill on the floorboard where Defendant's feet had been and it appeared that there was a white powdery substance along the inside of the bill. [11-4-10 Tr. 28-29, 50-51, 60-61]

Officer Rice patted down the driver for weapons and Officer Wilson patted down Defendant. [11-4-10 Tr. 31] No weapons or contraband were discovered during the course of the pat downs. [11-4-10 Tr. 32, 52] The officers requested identification from all three individuals, conducted a wants and warrants check, and discovered that the driver had an outstanding misdemeanor arrest warrant and Defendant was on probation. [11-4-10 Tr. 32] At that point, the officers decided to arrest the driver for possession of marijuana, open container, and for the outstanding warrant. [11-4-10 Tr. 32] Because the car did not belong to any of the three occupants, the officers made the decision to have it towed. [11-4-10 Tr. 34] In an effort to inventory the vehicle prior to the tow, Officer Rice took the twenty-dollar bill from the floorboard and poured the white powdery residue, believed by him to be cocaine, into a bag for further testing. [11-4-10 Tr. 29, 35] Defendant was then

placed under arrest for possession of cocaine. [11-4-10 Tr. 39]

DISCUSSION

On appeal, Defendant raises the following issues: (1) the initial encounter between the police and Defendant was not consensual, but rather was a seizure for which reasonable suspicion did not exist; (2) the district court erred in finding that individualized, particularized reasonable suspicion existed as to Defendant with regard to the marijuana found in the center console of the car; (3) the district court erred in finding that the plain view exception to the warrant requirement authorized the officer to seize from the back floorboard a twenty-dollar bill that was not readily apparent contraband; and (4) the State failed to meet its burden of proof with regard to the doctrine of inevitable discovery.

We hold that Defendant was seized by police when the two officers approached the parked vehicle she was sitting in and ordered the driver to open his door. Because the officers did not at that point have reasonable suspicion to justify the seizure of any of the occupants of the vehicle, we need not reach the other issues raised by Defendant, except insofar as to reach the conclusion that the inevitable discovery doctrine does not apply in this case where the anticipated inventory search would not have been wholly independent of the illegal seizure.

I. Standing

The issue of standing was initially raised by the State at the beginning of the motion hearing and the district court reserved ruling on the question. [11-4-10 Tr. 4-5] The district court never returned to the issue and it was not briefed by either party. We will briefly address it, as we have determined standing to be a threshold issue in cases involving the search of a vehicle in which the defendant was a passenger. *State v. Portillo*, 2011-NMCA-079, ¶ 10, 150 N.M. 187, 258 P.3d 466.

“Generally speaking, passengers lack a reasonable expectation of privacy in vehicles or their contents and, as a consequence, passengers typically lack standing to challenge automobile searches” absent a showing of special circumstances. *Id.* However, we have also held that “to the extent that Defendant was illegally detained, Defendant has standing to seek the suppression of any evidence obtained as a result of that detention.” *Id.* Because Defendant is claiming that the evidence was obtained as the result of her seizure, unsupported by reasonable suspicion, we conclude that she has standing to seek suppression of such evidence.

II. Standard of Review

In reviewing a district court’s ruling denying a motion to suppress, this Court draws all reasonable inferences in favor of the ruling and defers to the district court’s findings of fact as long as they are supported by substantial evidence. *State v. Jason L.*, 2000-NMSC-018, ¶¶ 10-11, 129 N.M. 119, 2 P.3d 856. If the district court does not state on the record a disbelief of uncontradicted testimony, we “presume the court believed all uncontradicted evidence.” *Id.* ¶ 11. “When a seizure occurred and whether it was based on reasonable suspicion are mixed questions of fact and law because they involve the mixture of facts and evaluative judgments.” *State v. Eric K.*, 2010-NMCA-040, ¶ 14, 148 N.M. 469, 237 P.3d 771. We evaluate those questions de novo. *Id.*

III. Analysis

A. The Initial Encounter was Not Consensual and Constituted a Seizure

Only investigatory detentions and arrests are considered seizures for the purposes of the Fourth Amendment’s protection against unreasonable searches and seizures. *Jason L.*, 2000-NMSC-018, ¶ 14. While both the State and Defendant acknowledge that Defendant was seized by the police at some point in the encounter, they disagree as to when exactly the seizure occurred. Defendant

contends that she was seized when the officers approached the car and ordered the driver to open the door. **[BIC 11, 16-17; RB 1-2]** The State argues that Defendant was not seized until she was asked to exit the car following Officer Rice's discovery of marijuana in the center console. **[AB 17]** Everything up until that point, according to the State, was a consensual encounter. **[AB 7]** "The point at which seizure occurs is pivotal because it determines the point in time the police must have reasonable suspicion to conduct an investigatory stop." *State v. Harbison*, 2007-NMSC-016, ¶ 10, 141 N.M. 392, 156 P.3d 30.

Under *United States v. Mendenhall*, 446 U.S. 544 (1980), "a person is seized within the meaning of the [F]ourth [A]mendment when, in view of all the circumstances surrounding the incident, a reasonable person would have believed he was not free to leave." *State v. Lopez*, 1989-NMCA-030, ¶ 4, 109 N.M. 169, 783 P.2d 479. This is a case-by-case determination balancing the intrusion into individual privacy against the State's interest in crime prevention, looking at the totality of the circumstances. *Jason L.*, 2000-NMSC-018, ¶ 14.

The State correctly asserts that the police do not need justification to approach a person and ask that person questions, so long as the actions of the officers do not "convey a message that compliance with their requests is required." *Id.* ¶ 14 (quoting *Florida v. Bostick*, 501 U.S. 429, 435 (1991)). Police contact is consensual so long "as a reasonable person would feel free to disregard the police and go about his business or[] to decline the officers' requests or otherwise terminate the encounter." *State v. Scott*, 2006-NMCA-003, ¶ 18, 138 N.M. 751, 126 P.3d 567 (internal quotation marks and citations omitted). However, "if an officer conveys a message that an individual is not free to walk away, by either physical force or a showing of authority, the encounter becomes a seizure under the Fourth Amendment." *State v. Gutierrez*, 2008-NMCA-015, ¶ 9, 143 N.M. 522, 177 P.3d

1096 (internal quotation marks and citation omitted).

Additionally, for purposes of the Fourth Amendment, “a seizure based on a show of authority, as opposed to physical force, requires ‘submission to the assertion of authority.’” *Harbison*, 2007-NMSC-016, ¶ 13 (quoting *California v. Hodari D.*, 499 U.S. 621, 626 (2000)). **[However, in *State v. Garcia*, 2009-NMSC-049, ¶ 35, 147 N.M. 134, 217 P.3d 1032, our Supreme Court held that our state constitution does not require submission to authority, and instead, the “free-to-leave” test found in *Mendenhall* is the standard for determining whether a person is seized for purposes of Article II, Section 10 of the New Mexico Constitution.]**

In making the determination as to whether a person was seized, we evaluate: (1) circumstances surrounding the contact, including whether police used a show of authority; and (2) whether the circumstances of the contact reached “such a level of accosting and restraint that a reasonable person would have believed he or she was not free to leave.” *Scott*, 2006-NMCA-003, ¶ 17 (quoting *State v. Affsprung*, 2004-NMCA-038, ¶ 6, 135 N.M. 306, 87 P.3d 1088). The first of these determinations is a fact-based inquiry which we review for substantial evidence. *Jason L.*, 2000-NMSC-018, ¶ 19. The second is a legal inquiry wherein we apply those facts to the law *de novo*. *Id.*

1. Circumstances Surrounding the Contact

Evaluating the circumstances surrounding the contact, we first note that the district court did not make any factual findings. “This is a regular occurrence when we review decisions on motions to suppress evidence in criminal cases.” *State v. Gonzales*, 1999-NMCA-027, ¶ 11, 126 N.M. 742, 975 P.2d 355, *cert. denied*, 126 N.M. 533, 977 P.2d 352. Therefore, we presume that the district court believed the uncontradicted testimony of the sole witness, Officer Rice. Where the testimony

is unclear, we will decide in favor of the district court's ruling, unless that ruling is wrong as a matter of law. *See State v. Werner*, 1994-NMSC-025, ¶ 10, 117 N.M. 315, 871 P.2d 971 (stating that "[a] reviewing court is not . . . bound by a trial court's ruling when predicated upon a mistake of law")(citation omitted).

Looking at the initial encounter in this case, two police officers on bicycle patrol, in uniform and wearing their badge of office, became suspicious when they noticed three individuals sitting in an unfamiliar car parked in an apartment complex parking lot. [11-4-10 Tr. 9-11, 16] Officer Rice became even more suspicious when he observed Defendant, sitting in the backseat, make an "abrupt" movement. [11-4-10 Tr. 13-14] Although they were unaware of how long the individuals had been in the car, the officers decided to approach them to "see what was going on, see what they were up to, make sure that everything was okay." [11-4-10 Tr. 17] Officer Rice intended on asking the passengers "where they came from, where they lived, if they were here to see anybody, what exactly was going on." [11-4-10 Tr. 18] As he approached the car from behind, Officer Rice observed the driver "drop" his left shoulder down. [11-4-10 Tr. 17, 19] Concerned for officer safety because of this "abrupt" movement, Officer Rice did not ask the occupants any of the questions he originally intended. [11-4-10 Tr. 19] In fact, there were no preliminary introductions or questions put to the driver or the passengers. Instead, Officer Rice's first words, addressed to the driver, were either "SIR, open the door" (emphasis in transcript) or "Hey man, open the door." [11-4-10 Tr. 20] The driver immediately opened the door. [11-4-10 Tr. 20]

The State, both at the motion hearing and in its brief, repeatedly characterized the statements "SIR, open your door" or "Hey man, open your door" as "requests," or as the officer "asking" the driver to open his door. [11-4-10 Tr. 71-72, 74, 76; AB 2, 7-8] On appeal, the State urges us to defer

to the district court as factfinder and to infer that the district court found that “Officer Rice’s tone was not so coercive that it rendered the encounter non-consensual.” [AB 9]

While we would normally defer to the district court’s findings of fact if supported by substantial evidence, in this case it is unclear from the record what the district court’s findings were. There were no oral or written findings of fact. However, the district court concluded as a matter of law that “the officer had the right to approach the vehicle to briefly detain the occupants, determine, you know, what they were doing and where they were, why they were there.” [11-4-10 Tr. 88-89] Because the State essentially conceded during the hearing that reasonable suspicion did not exist until at least after the driver opened the door and Officer Rice observed the marijuana in the center console [11-4-10 Tr. 69, 71, 76, 80], the ruling made by the district court was wrong as a matter of law. We are not bound by a ruling predicated on a mistake of law. *Werner*, 1994-NMSC-025, ¶ 10. Whether the district court believed that the statement by Officer Rice was made in a “non-coercive” tone of voice cannot be gleaned from the ruling, as the district court could very well have found that the officer’s approach, language, and tone constituted a show of authority that detained the occupants and still could have reached the same erroneous legal conclusion that the officers could “briefly detain” the occupants in order to ask them questions without reasonable suspicion.

Furthermore, aside from the tone of voice, the State provides no reasoning as to why we should interpret Officer Rice’s plain, unequivocal language as a “request” and not as an order from a uniformed police officer. Thus, based on the actual language Officer Rice used and not on counsel’s characterization, we determine that Officer Rice ordered the driver to open his door.

2. A Reasonable Person Would Not Have Believed She Was Free to Leave

The approach of the car by the two officers and the subsequent order to open the door was

the extent of the initial encounter between the officers and the occupants of the car. The crux of this case is whether that constituted a “show of authority” at such a level of “accosting and restraint” that it would have conveyed the message to the occupants that they were not free to leave. Three factors should be considered in order to determine whether a reasonable person would feel free to walk away from an encounter with police: “(1) the conduct of the police; (2) the person of the individual citizen; and (3) the physical surroundings of the encounter.” *Jason L.*, 2000-NMSC-018, ¶ 15 (internal quotation marks and citations omitted). Examples of circumstances that might indicate a seizure would be “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Lopez*, 1989-NMCA-030, ¶ 3 (quoting *Mendenhall*, 446 U.S. at 554). We find the following cases to be instructive in making our determination.

In *Jason L.*, police officers saw two boys walking down the street. 2000-NMSC-018, ¶ 3. As in the present case, there had been no reports of criminal or suspicious activity, but the officers thought that the boys were acting suspiciously because they kept looking over their shoulders and one of the boys was fussing with his waistband. *Id.* ¶ 13. The officers approached, told the boys to “come here,” and then began to ask them questions about whether they had any knives or weapons. *Id.* ¶ 17. The Court held that the boys were seized at that point in part because the officers “did not ask to speak with the boys, but rather demanded that they approach.” *Id.* The Court also pointed out that “[a]t no point did the officers tell either boy they were free to leave or that they were not required to answer their questions. While case law has not required such advice, its absence is a relevant factor.” *Id.* ¶ 18.

In *Garcia*, the defendant was walking down the street when an officer stopped his police vehicle near the defendant, shined a spotlight on him, and “told, ordered, or yelled at him to stop.” 2009-NMSC-046, ¶ 41 (internal quotation marks omitted). The Court held that these “initial actions demonstrated accosting and restraint.” *Id.* The Court stated that “[t]he critical factor is whether the policeman, even if making inquiries a private citizen would not, has otherwise conducted himself in a manner which would be perceived as a nonoffensive contact if it occurred between two ordinary citizens.” *Id.* ¶ 38 (quoting 4 Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment*, § 9.4(a), at 425-426 (4th ed. 2004) (footnotes omitted)).

In *State v. Soto*, 2008-NMCA-032, ¶ 1, 143 N.M. 631, 179 P.3d 1239, two officers on patrol observed the defendant riding a bike on a road around 2:30 am. The officers decided to see where he was headed, so they pulled their police car up next to him. *Id.* They did not turn their lights on or attempt “an enforcement stop.” *Id.* ¶ 3. In response to the police car pulling up beside him, defendant stopped his bike. *Id.* We stated that “[w]e presume the citizen to be an innocent reasonable person” and we “consider the sequence of the officer’s actions and how a reasonable person would perceive those actions.” *Id.* ¶ 6 (quoting *State v. Williams*, 2006-NMCA-062, ¶ 10, 139 N.M. 578, 136 P.3d 579, *cert. denied*, 2006-NMCERT-006, 140 N.M. 224, 141 P.3d 1278). We determined that defendant “submitted to this show of authority by stopping his bicycle” and was therefore seized. *Soto*, 2008-NMCA-032, ¶ 13.

In the present case, two police officers approached a parked car and one officer immediately ordered the driver to open his door. The driver was not told that he was free to disregard this order or that he was free to drive away. If this had been contact between two ordinary citizens, the demand by one to the other to open his car door would surely be seen as offensive. A reasonable innocent

person receiving the same order from a uniformed police officer would perceive that he was not free to disregard the order, let alone free to leave. This is especially true where “there were no preliminary questions; Defendant did not initiate the encounter, and the officer did not begin the encounter in a conversational manner.” *Williams*, 2006-NMCA-062, ¶ 14 (internal quotation marks and citation omitted). The driver immediately complied with the order and opened his door. Contrary to the State’s characterization of this as an act of “consent” [11-4-10 Tr. 76] in which the driver did not seem “reluctant” [AB 9], it is more properly viewed as submission to the police officers’ assertion of authority. Therefore, under the Fourth Amendment, the driver was seized by the officers at the moment he opened his door in compliance with the officer’s order.

The next question, then, is whether the passengers, including Defendant, were also seized at the time the officer ordered the driver to open his door. The State contends that even if the “request” to open the door is considered an “order,” the order itself was directed toward the driver of the vehicle and not toward Defendant. [AB 9] The State further argues that a reasonable person in Defendant’s position would have felt that she was free to leave, as she was never told that she was not free to leave and she remained physically able to exit the vehicle and walk away. [AB 9] We do not agree.

Lopez involved circumstances similar to the case at bar. Two men, defendant-driver and a passenger, were sitting in a van parked legally at the end of a dead end street. 1989-NMCA-030, ¶ 11. A police van drove up and parked directly in front of the van. *Id.* Four police officers exited and approached the van on foot, with two of the officers displaying their badge of office. *Id.* The Court concluded that the blocking of the defendant’s vehicle constituted a physical restraint, holding that “ordinarily, a driver and passenger in a car whose progress is blocked by police would not believe

themselves free to leave within the meaning of the Fourth Amendment.” *Id.* ¶ 13. The Court also found a showing of authority based on the approach by the four officers, two displaying badges. *Id.* ¶¶ 12, 18. Because the defendant was the driver, the opinion is not clear as to whether the generalized show of authority would have been sufficient to communicate to the passenger in the vehicle that he was not free to leave, absent the physical restraint.

However, “[i]t is well established that the initiation of a traffic stop constitutes a seizure of the vehicle’s occupants.” *Portillo*, 2011-NMCA-079, ¶ 12; *see also State v. Olson*, 2012-NMSC-035, ¶ 11, 285 P.3d 1066 (holding that “an automobile stop and the attendant detention of its occupants is a seizure”). This is in line with the United States Supreme Court’s holding in *Brendlin v. California* that in the context of a traffic stop, “any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission.” 551 U.S. 249, 257 (2007). The Supreme Court further stated that merely “by staying inside” the car, the passenger submitted to the assertion of police authority. *Id.* at 262. The Supreme Court explained that it is “reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not let people move around in ways that could jeopardize his safety.” *Id.* at 258. Although the present case does not involve a traffic stop, the same rationale applies where there were no indicia of a consensual encounter that would have allowed a passenger to differentiate this contact from an investigation.

Furthermore, when officer safety is a concern, “risk of harm to both police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.” *Maryland v. Wilson*, 519 U.S. 408, 414 (1997) (quoting *Michigan v. Summers*, 452 U.S. 692, 702-703 (1981)). Thus, when Officer Rice immediately ordered the driver to “open the door” after he perceived a

movement that made him concerned for officer safety, he was clearly exercising command of the situation. However, “unquestioned police command [is] at odds with any notion that a passenger would feel free to leave.” *Brendlin*, 551 U.S. at 258. This is supported by the fact that the officers in the present case did not tell the passengers that they were free to leave. It is not reasonable to believe that Officer Rice would have simply let Defendant exit the vehicle and walk away, especially given that Defendant was subjected to a pat down search for “officer safety” as soon as she exited the vehicle at the officer’s request.

It is clear from the circumstances that a reasonable person in Defendant’s position would not have felt free to leave. By remaining in the vehicle until Officer Rice asked her to get out, Defendant submitted to the officers’ assertion of authority. Relying on *Williams*, 2006-NMCA-062, ¶ 17, that “it would be incongruous for us to hold that the Fourth Amendment provides greater protections for an individual in a moving vehicle than it provides an individual in a non moving vehicle[.]” we hold that Defendant was seized for purposes of the Fourth Amendment when the two uniformed police officers approached the vehicle and immediately ordered the driver to open his door.

[As such, we need not determine whether Defendant sufficiently preserved the argument under Article II, Section 10 of the New Mexico Constitution that she was seized on the theory that the state constitution affords a heightened privacy interest to the occupants of a parked vehicle located on private residential property and thus requires an officer to have reasonable suspicion merely to approach the vehicle.]

B. Reasonable Suspicion Did Not Exist at the Inception of the Seizure

Having concluded that Defendant was seized by the police officers at the time of the initial encounter, we must next determine whether the seizure was lawful. “An officer may detain a citizen

if the officer has a reasonable and articulable suspicion that the person stopped is or has been involved in criminal activity.” *State v. Watley*, 1989-NMCA-112, ¶ 17, 109 N.M. 619, 788 P.2d 375. The critical question is whether the officer had an individualized suspicion that Defendant was violating any law when he subjected Defendant to detention. *State v. Patterson*, 2006-NMCA-037, ¶ 23, 139 N.M. 322, 131 P.3d 1286. “Determinations of reasonable suspicion are reviewed de novo.” *Harbison*, 2007-NMSC-016, ¶ 8.

Officer Rice testified during the suppression hearing that when he first saw the car parked in the parking lot, he had not observed the occupants doing anything illegal or violating any laws. [11-4-10 Tr. 44-46] The occupants were merely sitting in the car and the officers did not know how long they had been there. [11-4-10 Tr. 48-49] No reports or dispatches had been received regarding suspicious or criminal activity in the area. [11-4-10 Tr. 46] Officer Rice stated only that “[i]t raised my suspicion because it was occupied, not running, some of the other crimes in that area that I’ve investigated before have shown me that when that’s occurring, there’s a possibility of any number of things going on.” [11-4-10 Tr. 48] Officer Rice also found it to be suspicious that he had not seen this car in the area before. [11-4-10 Tr. 11, 14]

As the officers rode their bikes closer, but still located down the street and behind the car, Officer Rice saw Defendant “move abruptly to her right” and back to the left. [11-4-10 Tr. 14] Officer Rice testified that based upon his training and experience, “it’s common for people who may have something to hide, who may be up to something, when they see police to move suddenly to either conceal whatever is in their hand, to cover something up, to grab something, possibly, abrupt movement is a clue that something may – something else may be going on.” [11-4-10 Tr. 14-15] After the officers had parked their bikes and as they were approaching the occupants to ask them the

basic questions discussed earlier, Officer Rice saw the driver drop his shoulder down. [11-4-10 Tr. 20]

Reasonable suspicion must exist at the inception of the seizure. *Jason L.*, 2000-NMSC-018, ¶ 20. The question, then, is whether the movement to the right and back to the left by Defendant, at the time sitting in the backseat of a parked car for an unknown period of time, and the driver's subsequent movement of his shoulder downward provided the officers with individualized reasonable suspicion that the occupants of the car were engaged in criminal activity or violating any law. The answer here is no, especially where there had been no reports or dispatches of suspicious activity in the area and without any evidence that Defendant or the driver actually saw the police officers prior to making their movements. The answer is no as well to the question of whether reasonable suspicion existed that Defendant or driver "posed a danger of harm from weapons." *Affsprung*, 2004-NMCA-038, ¶ 20. To hold otherwise would be to "invoke[] the specter of a society in which innocent citizens may be stopped, searched, and arrested at the whim of police officers who have only the slightest suspicion of improper conduct." *Adams v. Williams*, 407 U.S. 143, 162 (1972) (Marshall, J., dissenting). Balancing Defendant's privacy interest with the State's interest in preventing crime, the seizure of Defendant in this case was unreasonable. The fact that the officer's hunch ultimately proved to be correct does not make suspicion based on nothing more than two "abrupt" movements by the occupants of a lawfully parked car reasonable.

C. The Evidence Found as a Result of the Illegal Seizure Must Be Suppressed

"It is established law that evidence discovered as a result of the exploitation of an illegal seizure must be suppressed unless it has been purged of its primary taint." *Portillo*, 2011-NMCA-079, ¶ 25. In *Portillo*, we agreed that "once the issue of standing has been resolved, we have

conducted the fruits analysis in the exact same manner with respect to each type of occupant, whether driver or passenger.” *Id.* ¶ 30 (internal quotation marks and citation omitted). In this case, the driver opened the car door and exposed the open container and marijuana to the officer as a direct result of the illegal seizure of the occupants of the car. The subsequent discovery of the twenty-dollar bill containing suspected cocaine residue occurred only after the officer asked Defendant to get out of the car to investigate the marijuana. There was no evidence presented that would indicate that any of this evidence was purged of its primary taint. Thus, this evidence “was come at by the exploitation of the illegality” and must be suppressed. *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (internal quotation marks omitted).

As to the State’s contention that the suspected cocaine would have been inevitably discovered during an inventory search of the vehicle, we are not persuaded. For the inevitable discovery doctrine to apply, “the lawful means by which the evidence could have been attained must be wholly independent of the illegal actions.” *State v. Wagoner*, 2001-NMCA-014, ¶ 13, 130 N.M. 247, 24 P.3d 306. The inventory search in this case was contingent on at least the driver being arrested and the car towed. However, because the arrest of the driver was predicated solely on the evidence discovered as a result of the illegal seizure, including the fact that he had an outstanding warrant for his arrest, we conclude that the purported inventory search would not have been wholly independent of the illegal seizure.

CONCLUSION

Defendant was seized without reasonable suspicion and evidence was discovered as a result of the exploitation of her illegal detention. We reverse the district court’s denial of Defendant’s motion to suppress.

REFERENCE LIST

Daniel J. Gallegos

<p>The Honorable Ronald D. DeSantis Congressman (R-FL) United States House of Representatives 308 Cannon House Office Building Washington, DC 20515 (202) 225-2706 * Naval Justice School classmate and JAG colleague</p> <p>Rear Admiral Kyle Cozad, USN Commander, Naval Education and Training Command 250 Dallas Street Pensacola, FL 32508 (850) 452-2182 * Former Commander, Joint Task Force – Guantanamo (JTF-GTMO)</p> <p>The Honorable Linda M. Vanzi Chief Judge New Mexico Court of Appeals P.O. Box 25306 Albuquerque, NM 87125 (505) 767-6134 * Colleague, NM Court of Appeals</p> <p>The Honorable J. Miles Hanisee Judge New Mexico Court of Appeals P.O. Box 25306 Albuquerque, NM 87125 (505) 767-6123 * Colleague, NM Court of Appeals</p>	<p>Mark Silverman Deputy Head of Delegation International Committee of the Red Cross 1100 Connecticut Ave. NW, Suite 500 Washington, DC 20036 (202) 587-4600 * Former counterpart during my time at JTF-GTMO</p> <p>Captain Matthew Gabe, JAGC, USN Commanding Officer, Navy Reserve Defense Service Office West 3395 Sturtevant St., Suite 2 San Diego, CA 92136 (415) 819-6621 * JAG colleague / Served together in Iraq</p> <p>Commander Brian Ellis, JAGC, USN Force Judge Advocate Naval Special Warfare Command 2000 Trident Way San Diego, CA 92155 (619) 537-1965 * Current supervisor of all active duty and reserve Naval Special Warfare JAGs</p> <p>Robert J. Aragon Partner Aragon Moss Law Firm 2201 Menaul Blvd. NE #B Albuquerque, NM 87107 (505) 872-3020 * Attorney colleague / Family friend</p>
---	---

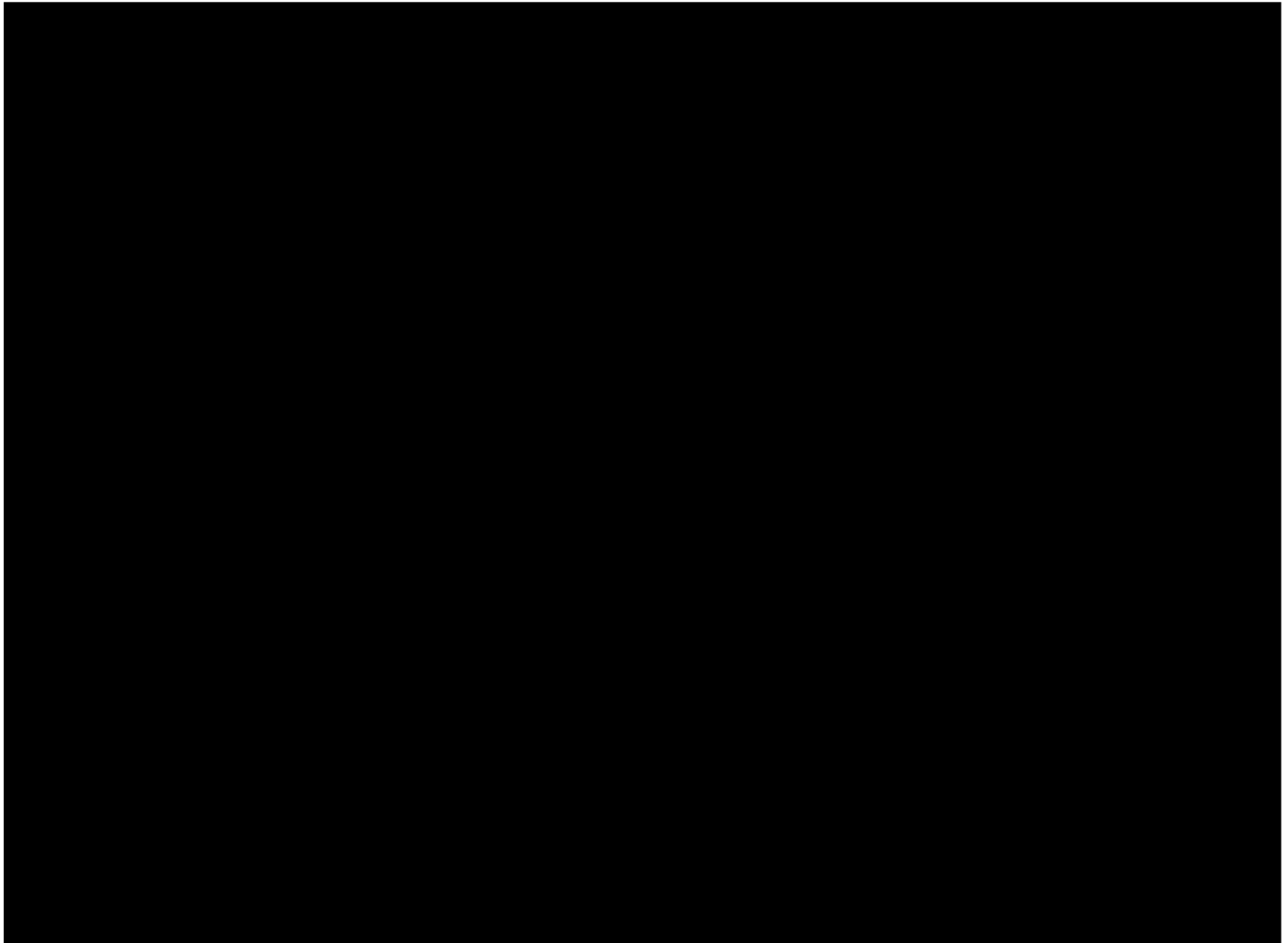
**Paul G. Fyfe
Chief Staff Attorney
New Mexico Court of Appeals
P.O. Box 2008
Santa Fe, New Mexico 87501**

REC'D AUG 14 REC'D

August 14, 2017

Attn: Chair
Judicial Nominating Commission
UNM School of Law
MSC11 6070
1 University of New Mexico
Albuquerque, NM 87131-0001

Dear Nominating Commission:



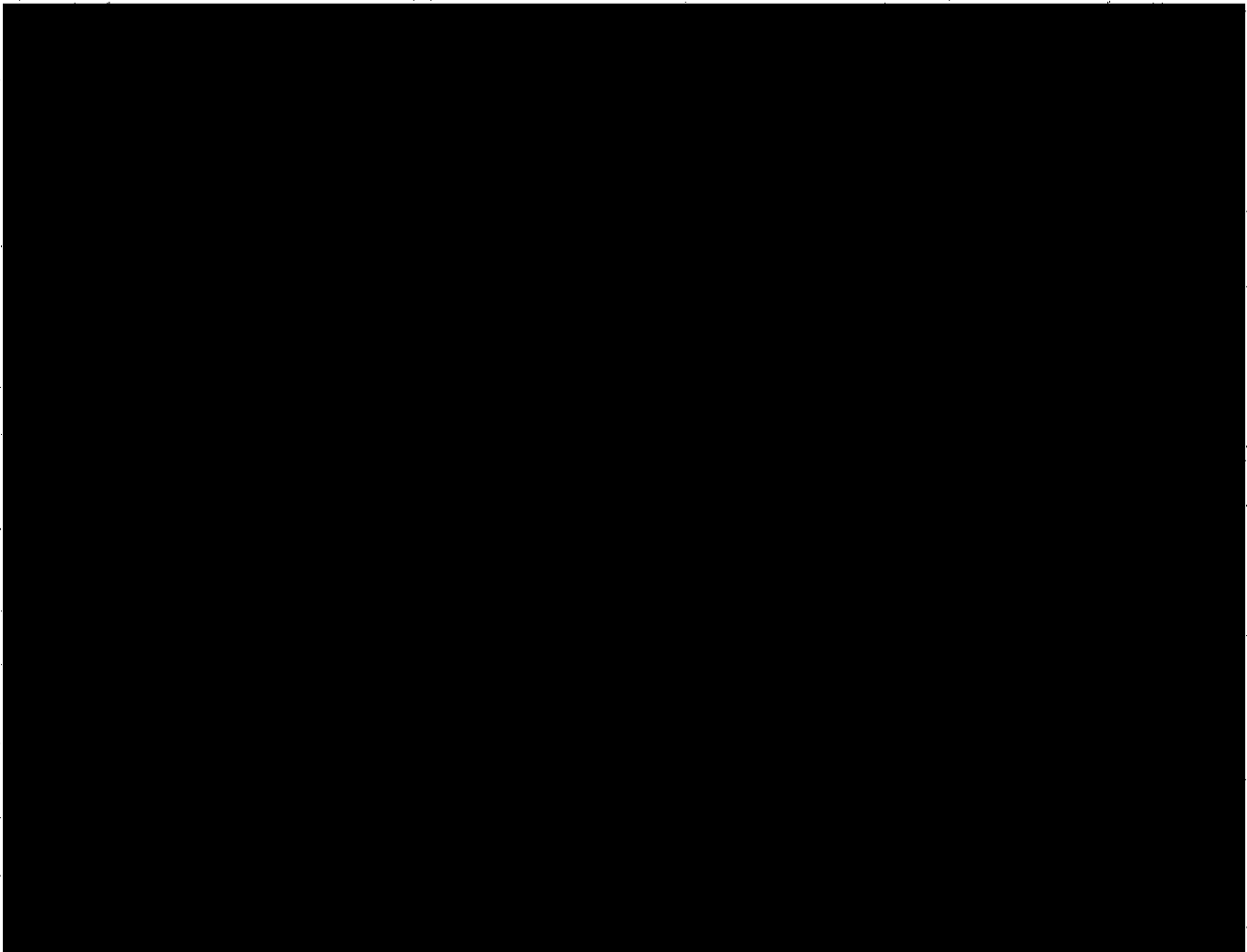
Richard B. Pugh
518 Slate St. NW
Albuquerque, NM 87102
(505) 400-9535

REC'D AUG 15 REC'D

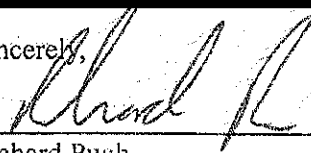
New Mexico Judicial Selection Committee
Dean Alfred Mathewson, Chair
UNM School of Law
MSC11 6070
1 University of New Mexico
Albuquerque, NM 87131-0001

Re: Daniel Gallegos Application for New Mexico Court of Appeals

Committee Members:



Sincerely,


Richard Pugh

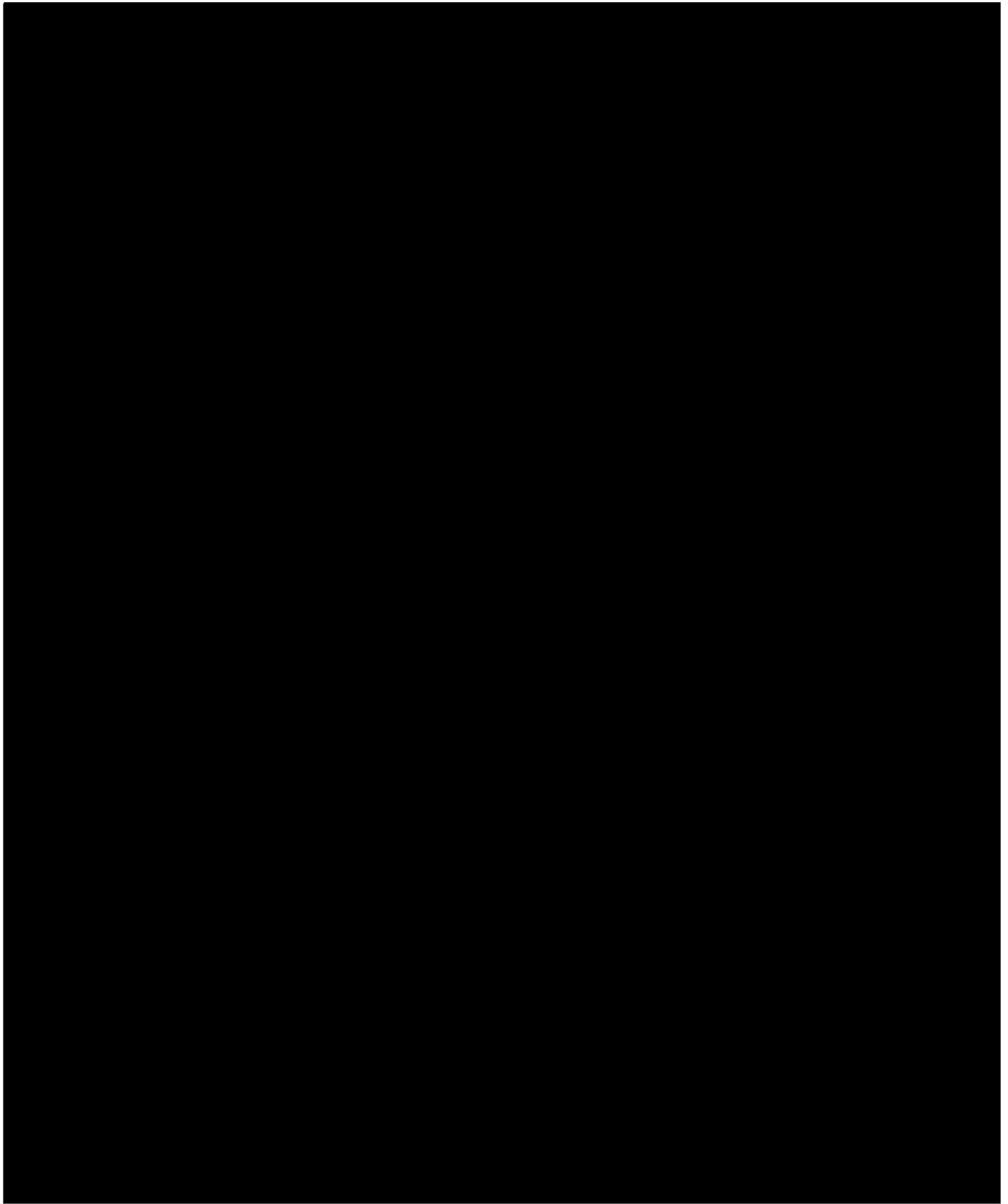
August 12, 2017


Judicial Nominating Commission
UNM School of Law
MSC11 6070
1 University of New Mexico
Albuquerque, NM 87131-0001

REC'D AUG 15 REC'D

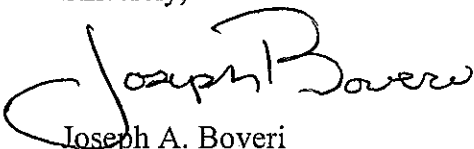
RE: Recommendation letter on behalf of Mr. Daniel J. Gallegos, an applicant for a position on the New Mexico Court of Appeals

Dear Judicial Nominating Commission,





Sincerely,



Joseph A. Boveri

Commander, United States Navy, Retired
Judge Advocate General's Corps



DEPARTMENT OF THE NAVY
NAVY-MARINE CORPS TRIAL JUDICIARY
WESTERN JUDICIAL CIRCUIT SAN DIEGO
3395 STURTEVANT STREET, SUITE 8
SAN DIEGO, CA 92136-5025

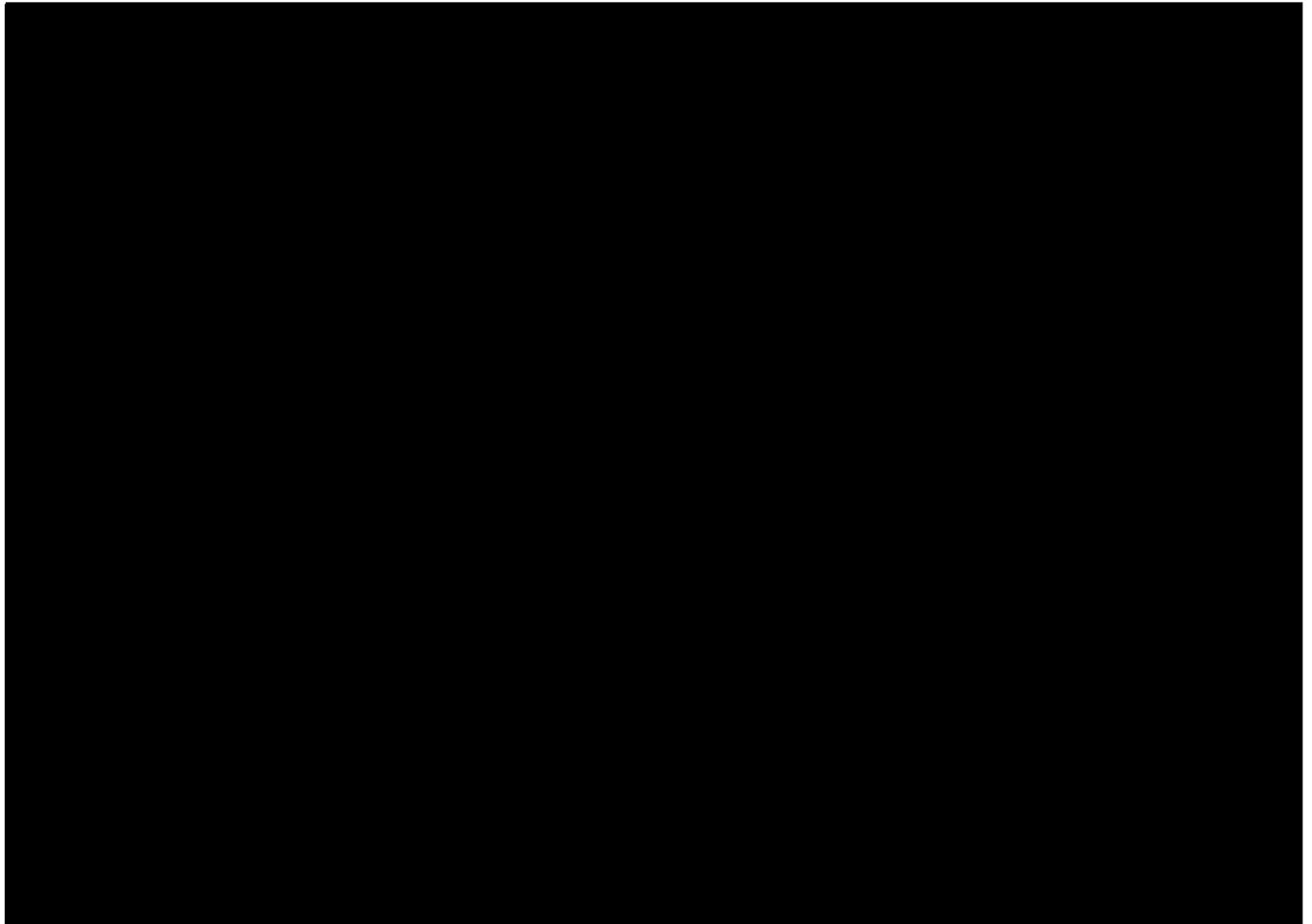
5817
Ser 00/011
July 19, 2017

Attn: Chair
Judicial Nominating Commission
UNM School of Law
MSC11 6070
1 University of New Mexico
Albuquerque, NM 87131-0001

REC'D AUG 16 REC'D

Dear Sir or Madam:

SUBJECT: LETTER OF RECOMMENDATION FOR JUDICIAL APPOINTMENT OF
MR. DANIEL GALLEGOS



5817
Ser 00/011
July 19, 2017



Sincerely,

Handwritten signature of B. L. Payton-O'Brien.

B. L. PAYTON-O'BRIEN
Captain, Judge Advocate General's Corps
United States Navy
Senior Military Judge